

Department of Health and Human Services

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§ 95.612 Disallowance of Federal Financial Participation (FFP).

If the Department finds that any ADP acquisition approved or modified under the provisions of § 95.611 fails to comply with the criteria, requirements, and other activities described in the approved APD to the detriment of the proper, efficient, economical and effective operation of the affected program, payment of FFP may be disallowed. In the case of a suspension of the approval of a Child Support APD for enhanced funding, *see* § 307.40(a). In the case of a suspension of the approval of an APD for a State Automated Child Welfare Information System (SACWIS) project, *see* § 1355.56.

[75 FR 66339, Oct. 28, 2010]

§ 95.613 Procurement standards.

(a) *General.* Procurements of ADP equipment and services are subject to the procurement standards prescribed by Part 92 regardless of any conditions for prior approval. The Department retains the authority to provide greater oversight including requiring a State to comply with § 92.36(c) if the Department determines that the State procurement process is an impediment to competition that could substantially impact project cost or risk of failure.

(b) Those standards, as well as the requirement for prior approval, apply to ADP services and equipment acquired by a State or local agency, and the ADP services and equipment acquired by a State or local Central Data Processing facility primarily to support the Social Security Act programs covered by this subpart. Service agreements are exempt from these procurement standards.

[51 FR 45326, Dec. 18, 1986, as amended at 75 FR 66339, Oct. 28, 2010]

§ 95.615 Access to systems and records.

The State agency must allow the Department access to the system in all of its aspects, including pertinent state staff, design developments, operation, and cost records of contractors and subcontractors at such intervals as are deemed necessary by the Department to determine whether the conditions for approval are being met and to de-

termine the efficiency, economy and effectiveness of the system.

[75 FR 66340, Oct. 28, 2010]

§ 95.617 Software and ownership rights.

(a) *General.* The State or local government must include a clause in all procurement instruments that provides that the State or local government will have all ownership rights in software or modifications thereof and associated documentation designed, developed or installed with Federal financial participation under this subpart.

(b) *Federal license.* The Department reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use for Federal Government purposes, such software, modifications, and documentation.

(c) *Proprietary software.* Proprietary operating/vendor software packages which are provided at established catalog or market prices and sold or leased to the general public shall not be subject to the ownership provisions in paragraphs (a) and (b) of this section. FFP is not available for proprietary applications software developed specifically for the public assistance programs covered under this subpart.

[51 FR 45326, Dec. 18, 1986, as amended at 75 FR 66340, Oct. 28, 2010]

§ 95.619 Use of ADP systems.

ADP systems designed, developed, or installed with FFP shall be used for a period of time specified in the advance planning document, unless the Department determines that a shorter period is justified.

§ 95.621 ADP reviews.

The Department will conduct periodic onsite surveys and reviews of State and local agency ADP methods and practices to determine the adequacy of such methods and practices and to assure that ADP equipment and services are utilized for the purposes consistent with proper and efficient administration under the Act. Where practical, the Department will develop a mutually acceptable schedule between the Department and State or local agencies prior to conducting such

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surveys or reviews, which may include but are not limited to:

(a) *Pre-installation readiness.* A pre-installation survey including an onsite evaluation of the physical site and the agency's readiness to productively use the proposed ADP services, equipment or system when installed and operational.

(b) *Post-installation.* A review conducted after installation of ADP equipment or systems to assure that the objectives for which FFP was approved are being accomplished.

(c) *Utilization.* A continuing review of ADP facilities to determine whether or not the ADP equipment or services are being efficiently utilized in support of approved programs or projects.

(d) *Acquisitions not subject to prior approval.* Reviews will be conducted on an audit basis to assure that system and equipment acquisitions costing less than \$200,000 or acquisitions exempted from prior approval were made in accordance with Part 92 and the conditions of this subpart and to determine the efficiency, economy and effectiveness of the equipment or service.

(e) *State Agency Maintenance of Service Agreements.* The State agency will maintain a copy of each service agreement in its files for Federal review.

(f) *ADP System Security Requirements and Review Process—(1) ADP System Security Requirement.* State agencies are responsible for the security of all ADP projects under development, and operational systems involved in the administration of HHS programs. State agencies shall determine the appropriate ADP security requirements based on recognized industry standards or standards governing security of Federal ADP systems and information processing.

(2) *ADP Security Program.* State ADP Security requirements shall include the following components:

(i) Determination and implementation of appropriate security requirements as specified in paragraph (f)(1) of this section.

(ii) Establishment of a security plan and, as appropriate, policies and procedures to address the following area of ADP security:

(A) Physical security of ADP resources;

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(B) Equipment security to protect equipment from theft and unauthorized use;

(C) Software and data security;

(D) Telecommunications security;

(E) Personnel security;

(F) Contingency plans to meet critical processing needs in the event of short or long-term interruption of service;

(G) Emergency preparedness; and,

(H) Designation of an Agency ADP Security Manager.

(iii) Periodic risk analyses. State agencies must establish and maintain a program for conducting periodic risk analyses to ensure that appropriate, cost effective safeguards are incorporated into new and existing systems. State agencies must perform risk analyses whenever significant system changes occur.

(3) *ADP System Security Reviews.* State agencies shall review the ADP system security of installations involved in the administration of HHS programs on a biennial basis. At a minimum, the reviews shall include an evaluation of physical and data security operating procedures, and personnel practices.

(4) Costs incurred in complying with provisions of paragraphs (f)(1)–(3) of this section are considered regular administrative costs which are funded at the regular match rate.

(5) The security requirements of this section apply to all ADP systems used by State and local governments to administer programs covered under 45 CFR part 95, subpart F.

(6) The State agency shall maintain reports of their biennial ADP system security reviews, together with pertinent supporting documentation, for HHS on-site review.

[43 FR 44853, Sept. 29, 1978, as amended at 51 FR 45329, Dec. 18, 1986; 53 FR 27, Jan. 4, 1988; 55 FR 4378, Feb. 7, 1990; 61 FR 39898, July 31, 1996; 75 FR 66340, Oct. 28, 2010]

§ 95.623 Reconsideration of denied FFP for failure to obtain prior approval.

For ADP equipment and services acquired by a State without prior approval, which is reflected in a record, the State may request reconsideration of the disallowance of FFP by written